Supreme Court, U. S.
FILED
SEP 29 1980
MICHAEL RODAK, JR., CLERK

No. 79-1942

In the Supreme Court of the United States

OCTOBER TERM, 1980

EARL DAVID SHAFFER,
Petitioner,

VERSUS

DAVID M. COOK, Oklahoma County District Judge,
Oklahoma County, State of Oklahoma,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

MEMORANDUM IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO REVIEW OKLAHOMA SUPREME COURT DECISION

JAMES D. FELLERS
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(405) 232-0621
Attorneys for Intervenor (below),
Stephen S. Jones

October, 1980

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MEMORANDUM

Petitioner herein filed original action No. 54,691 in the Supreme Court of Oklahoma asking that court to assume original jurisdiction in connection with a lawsuit then pending in the District Court of Oklahoma County, Oklahoma, in which Petitioner herein, Earl David Shaffer, was plaintiff and Stephen S. Jones, Esq., was defendant. Respondent herein, the Honorable David M. Cook, was the District Judge to whom that Oklahoma County case was assigned.

Petitioner sought to have the Supreme Court of Oklahoma disqualify Judge Cook, in which action Stephen S. Jones was permitted to intervene. Petitioner's Application to Assume Original Jurisdiction was denied by the Supreme Court of the State of Oklahoma on March 10, 1980, a copy

of that Order being marked Exhibit "A" and attached in the Appendix hereto.

Petitioner's Petition for a Writ of Certiorari was docketed in the Supreme Court of the United States on the 10th day of June, 1980 (see Notice marked Exhibit "B" and attached in the Appendix hereto). Said Petition was due in the Supreme Court of the United States 90 days after the denial of the Application to Assume Original Jurisdiction by the Supreme Court of Oklahoma on March 10, 1980, or by June 8, 1980.

Inasmuch as the 90th day fell on a Sunday, the Petition could have been timely filed on Monday, June 9, 1980, pursuant to the provisions of Rule 29.1 of the Rules of the Supreme Court of the United States. However, said Petition was not filed until June 10, 1980, one day out of time, and therefore said Petition should be denied as not being timely filed.

Intervenor below, Stephen S. Jones, prays that said Petition for a Writ of Certiorari be denied as not timely filed.

Respectfully submitted,

JAMES D. FELLERS
(*Attorney of Record for Intervenor*)
K. NICHOLAS WILSON

FELLERS, SNIDER, BLANKENSHIP,
BAILEY & TIPPENS
2700 First National Center
Oklahoma City, Oklahoma 73102
(405) 232-0621

Attorneys for Intervenor (below),
Stephen S. Jones

October, 1980

CERTIFICATE OF SERVICE

The undersigned hereby certifies that three (3) true and correct copies of the foregoing Memorandum were mailed to Petitioner, Earl David Shaffer, 709 Northwest 89th Street, Oklahoma City, Oklahoma 73114, this ____ day of October, 1980.

All parties required to be served have been served.

James D. Fellers

APPENDIX

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA
MAR 10 1980
Ross N. Lillard, Jr
CLERK

Monday, March 10, 1980

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

52,698 Linda A. Wilde v. Charles W. Wilde.
Appeal dismissed for want of diligence in its prosecution.

53,406 Sharon Kaye Gibson and Billy Gibson v. Dr. Marvin H. Herd.
Petition for review of certified interlocutory order denied.

54,244 (Consol. with 54,248) In The Matter of the Application of John V. Anderson, et al. v. The Banking Board of the State of Okla., et a
Certiorari denied.

54,691 Earl David Shaffer v. David M. Cook, Okla. County Dist. Judge, Okla. County, State of Okla., Stephen S. Jones.
Application to Assume Original Jurisdiction denied.

54,707 Wayne Scott Harrington v. Clifford E. Hopper, Judge of the Dist. Court in and for Tulsa County, State of Okla.
Application to Assume Original Jurisdiction and Petition for Writ of Prohibition denied.

54,730 Lucille Hamlin Freeman v. The Hon. Bill Ed Rogers.
Application to Assume Original Jurisdiction and Petition for Writ of Prohibition denied. CONCUR: Lavender, C.J., Irwin, V.C.J., Doolin, Hargrave, Opala, JJ. DISSENT: Williams, Hodges, Simms, JJ. NOT PARTICIPATING: Barnes, J.

54,807 Don R. & Laura L. Watson v. Hon. Jess I. Miracle, Dist. Judge.
Motion to Stay denied. Application to Assume Original Jurisdiction denied.

54,780 Sharon Parrish, and James Parrish v. The Hon. Samuel C. Fullerton, Dist. Judge, et al.
Respondents granted to April 5, 1980 to file brief.

54,783 Red River Railroad Authority, Inc., etc. v. The Hon. Jan Eric Cartwright, etc.
Any party hereto may show cause, if any there be, within 15 days of this date why Floyd W. Taylor, Esq. may not appear herein as special counsel for the Governor.

Chief Justice

EXHIBIT A

SUPREME COURT OF THE UNITED STATES

EARL DAVID SHAFFER
~~Appellant~~ Petitioner

vs.

DAVID M. COOK
~~Appellee~~ Respondent

No. 79-1942

To NICHOLAS WILSON, Counsel for Appellee—Respondent:

YOU ARE HEREBY NOTIFIED that an appeal—a petition for a writ of certiorari—in the above-entitled and numbered case was docketed in the Supreme Court of the United States on the 10TH day of JUNE, 19 80.

At the request of the Clerk of the Supreme Court, we are sending attached hereto an appearance form to be filed by you, or other counsel who will represent your party, with the Clerk at or before the time you file your response to our petition or jurisdictional statement.

Only those counsel who file an appearance form can expect to receive notification of the Court's action(s) in this case.

CERTIFICATE OF MAILING

This undersigned hereby certifies that a true & correct copy of the foregoing instrument was mailed to opposing counsel on record on the 7 day of July 19 80

Earl David Shaffer

Receipt # 047459

EARL DAVID SHAFFER
Counsel for ~~Appellant~~ Petitioner

709 NW 89th STREET
Number and Street

OKLAHOMA CITY, OKLAHOMA 73114
City, State and Zip Code

NOTE: Please indicate whether the case is an appeal or a petition for certiorari by crossing out the inapplicable terms. A copy of this notice should not be filed in the Supreme Court.

CO-75

EXHIBIT B